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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/645,466	08/18/2003	James Victor Cragg	USDP2212A-SOT2	7997
	7590 11/03/2004			
Raymond Y. Chan Suite 128 108 N. Ynez Ave. Monterey Park, CA 91754			EXAMINER WEAVER, SUE A	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/645,466

Applicant(s)

CRAGG, JAMES VICTOR

Examiner

Sue A. Weaver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the reinforcing element adapted to securely hold the butt of said weapon", as claimed in new claim 19, and the elongated strap extended from the affixed end to across the top opening of the storage compartment at a position above the butt of the weapon as is claimed in new claim 20, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

## INFORMATION ON HOW TO EFFECT DRAWING CHANGES

### Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

### Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

### Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

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of the following is required: There doesn't appear to be any description or shown in the drawings of an arrangement where the reinforcing elements are adapted for securely holding a butt of the weapon, as is now claimed in claim 19.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 19 and thus 20-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. While there is support in the original claims for the reinforcing elements selectively adjusting the width of the opening so as to securely hold the wrist of the weapon there doesn't appear to be any showing in the original disclosure of the reinforcing elements being adapted for securely holding a butt of the weapon, as is now claimed in claim 19, at least not in the manner accepted in the art of record. It is unclear what applicant intends to claim here.

There also doesn't appear to be any support for an arrangement where the elongated strap is extended from the fixed end to across the top opening of the storage compartment at a position above the butt of the weapon as claimed in claim 20.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19 recites the limitation "said front surface" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Although applicant appears to have modified claims 19-38 from earlier claims, it appears that some features were left out in the modification such as a front surface.

Claims 33-35 each recites the limitation "said durable belt" in line 5. There is insufficient antecedent basis for this limitation in the claim.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 19-24, 27 and 28, insofar as they are supported and understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Remington in view of Stella and Eng, all of record.

Remington is considered to each a holster made of a padded or cushioned material as shown in Figure 8. Therefore the holster includes a pad body and a pouch panel attached to the front of the pad body. The pad body includes a holding portion at 32 and a flap with attachment at 29. Although there isn't any particular suggestion of using the holster for left or right hand use to have shaped the receptacle for such universal use would have been obvious in view of such teaching by Stella. It is noted that the holster of Remington has only one holding portion or strap. Eng is considered to teach the prevision of a pair of spaced apart holding portion at the op of a holster for

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securing a weapon. Therefore to have provided the holster of Remington with a pair of straps at the top of the holster for securely retaining a weapon would have been obvious in view of such teaching by Eng at 20,20'. Whether one chooses to use only one or both straps is a matter of choice depending on how securely one desires to secure the weapon. Note the top curved edge of Stella.

6. Claims 25, 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 23 and 24 above, and further in view of Powell et al, of record.

To have further provided the flap with a strap and buckle assembly to secure it to the pouch panel would have been obvious in view of such teaching by Powell et al. Note the buckle taught by Powell et al. To have merely reversed the orientation of the plug and socket would have been no more than a reversal of parts and therefore obvious.

7. Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 20, 22 and 28 above, and further in view of Pitts, of record.

To have merely provided the pouch panel with a triangular shape attached to the pad body would have been obvious in view of Pitts, teaching such a design for holsters.

8. Claims 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 22, 26, and 32 above, and further in view of Baruch, of record.

To have provided a belt hanger affixed to the top edge of the pad body and having a pair of fasteners at the free ends of the straps for securing to a belt in a hanging orientation would have been obvious in view of such teaching by Baruch. To have added straps with fasteners to the edges of the pad body to secure around a limb would also have been obvious in view of the teaching of Baruch.

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 19-24 and 33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,685,066 B2 in view of Remington. The elimination of a part and its function has long been held to be obvious. Therefore to have eliminated the belt adapter of claims 1 and 2 of '066. to secure the holster in the manner taught by Remington would have been obvious. To have further provided fasteners on the straps and pouch to secure the straps would also have been obvious in view of such teaching by Remington..



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10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wu, Bianchi et al 663, Rolston et al, Kim and Villwock show other holster structures.

11. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

on \_\_\_\_\_.  
(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_

### **Certificate of Transmission**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) \_\_\_\_\_ - \_\_\_\_\_ on \_\_\_\_\_.  
(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_


Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (703) 308-1186. The examiner can normally be reached on Tuesday-Friday.

\_The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SW

  
Sue A. Weaver  
Primary Examiner